

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

\_\_\_\_\_) 96-262  
In the Matter of )  
Assessment of Presubscribed Interexchange ) CCB/CPD, No. 98-34  
Carrier Charges On Public Payphone Lines )  
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REPLY COMMENTS OF THE  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer  
Michael Carowitz  
Christopher T. McGowan

DICKSTEIN SHAPIRO MORIN  
& OSHINSKY LLP  
2101 L Street, N.W.  
Washington, D.C. 20037-1526  
(202) 828-2226

Attorneys for American Public  
Communications Council

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| Lines                                     | ) |                    |

**REPLY COMMENTS OF  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

Pursuant to the Commission's Public Notice, DA 98-845, released May 4, 1998, the American Public Communications Council ("APCC"), hereby submits its reply comments on the subject of the imposition of the presubscribed interexchange carrier charge ("PICC") on payphone service providers ("PSPs").<sup>1</sup> In its reply comments, APCC points out that (1) none of the other commenting parties have provided a rationale for continuing discriminatory differing treatment of LEC-owned versus privately owned payphones; (2) none of the other commenting parties addressed the "no-PIC" charge, which remains one of the central problems in the current practices relating to PICC; and (3) the Commission has not been presented with an adequate justification for the LECs to continue imposing the *multiline* business PICC rate on payphones.

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<sup>1</sup> Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines, CCB/CPD No. 98-34, DA 98-845, released May 4, 1998.

**A. The Commission Should End Discriminatory Treatment  
Between LEC-Owned And Independently-Owned Payphones**

As APCC stated in its comments, Section 276 of the Telecommunications Act of 1996 (“the Act”) mandates that a LEC must impose on its payphone operations any charge that it would impose on an independent PSP -- including the PICC -- at the corresponding single line or multiline rate. The Act’s abrogation of the regulatory distinction between LEC-owned and independently-owned payphones requires that there be no difference in charges imposed by an LEC on its own payphones versus those of an independent provider. APCC stresses that the competitive parity mandated by Section 276 can be achieved only through such equal treatment.

The commenting parties suggest several possible methods for the FCC to adopt to carry out its mandate to end LEC discrimination in favor of LEC payphone operations. Meanwhile the LECs offer no viable solution or explanation for the existence of a discrepancy or treatment between LEC-owned payphones and independently-owned payphones. The tortured logic that the commenting LECs rely on to support their disparate treatment of independently-owned and LEC-owned payphones does not hold up under even minimal scrutiny.<sup>2</sup>

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<sup>2</sup> Contrary to the command of Section 276, one commenting LEC actually suggests that the FCC should issue rules explicitly guaranteeing that there would be a regulatory distinction between LEC PSPs and independent PSPs (GTE Comments 8,10). (Proposes that LECs assess PICC based on 1+ carrier for “smart” payphones and on 0+ for “dumb” payphones).

For example, Bell Atlantic wrongly claims that payphone lines “do not have multiple presubscribed interexchange carriers.” (Bell Atlantic, 5) Not only is this statement false, as made clear by the record in this proceeding, but the rationale Bell Atlantic proffers for supporting its position is grossly out of date. Bell Atlantic argues that 0+ carriers that do not have coin capability are “subcontracting out” the 1+ coin sent-paid traffic to AMNEX or AT&T. (Bell Atlantic, 5). Bell Atlantic cites its own FCC tariff to support its position that there is one IXC then subcontracts for the 1+ service. Bell Atlantic refers to its own “public and semipublic coin telephones” as having an option to subcontract. The problem is that all of these classifications predate the FCC’s payphone order. Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act, 11 FCC Rcd. 21233 (1996) (“Payphone Order”). The Payphone Order not only eliminated the distinction between “public” and “semipublic” payphones, it also eliminated the very tariffing that Bell Atlantic is now relying on for support.

On the other hand, commenting parties that are not profiting from the LEC’s discrimination in favor of LEC-owned payphones have proposed equitable solutions for the application of PICCs to payphones. APCC supports the proposal of OneCall Communications and AMNEX to impute PIC charges directly to the LEC payphone unit as an end user. (OneCall, 4; AMNEX, 2) OneCall points out that this would equalize treatment between independent and LEC payphones since this proposal would alleviate the current problem of independently-owned payphones being charged a “passed-through” PICC, whereas the LEC-owned payphones are not. AMNEX adds that presubscribed carriers do not typically carry all of the interexchange traffic of a payphone, the way they would as a presubscribed carrier for a standard business customer. (AMNEX, 2) APCC

agrees that imputing the PICC charges for LEC payphones directly to the LEC payphone operations as an end user would be one method to end the discriminatory treatment that is in place currently.

As an alternative, parties suggest that the presubscribed 1+ carrier should be assessed the PICC for each payphone. (Oncor, 6; OneCall, 5). This proposal would also end the current disparate treatment between LEC-owned and independently-owned payphones. Simply put, the LECs cannot be allowed to continue to apply the PICC to an independent PSP's 1+ carrier, and then simultaneously apply the charge to a LEC PSP's 0+ carrier. Not only is this practice inconsistent, it is clearly discriminatory in a way that benefits the LECs' payphone operations and penalizes the independent PSPs. By imposing the PICC on the presubscribed 0+ carrier, a LEC, particularly a Bell Operating Company ("BOC") maximizes its revenues, as well as those of the LECs' payphone operations, because the charge is passed onto the entity (the 0+ carrier) that generally will have no choice but to absorb it. As APCC showed in its comments, 0+ carriers cannot pass the PICC of the subscriber of the line, the BOC payphone operations. Instead of passing on the charge to the IXC with which the BOCs have a relationship, the 1+ carrier, the BOCs pass the charge onto the carrier that has no ability to "fight back," the 0+ carrier. This is a clear instance of a BOC impermissibly discriminating in favor of the BOC's payphone operations.

As shown above, the commenting LECs seem to base their arguments in favor of continuing the discriminatory treatment on nomenclature that is now meaningless under the Commission's post 1996 Act rules. The Commission should not be misled – a presubscribed IXC by any other name (*e.g.*, "a subcontracted carrier") is still a PIC. Either of the two options presented by the commenting parties would eliminate the discrimination

now in place that favors LEC-owned payphones. As a matter of equity, the Commission must either require all LECs to apply the PICC to the 1+ carrier or order that the PICC be charged directly to the LEC payphone operations as end users.

**B. A “No-PIC” Charge Should Not Be Charged To Independently-Owned Payphones If It Is Not Charged To LEC-Owned Payphones**

APCC again reminds the Commission that the existence of a “no-PIC” charge is indivisibly intertwined with the issues under review in this proceeding. As APCC made clear in its comments, the “no-PIC” charge directly implicates the manner in which the LECs have discriminatorily applied the PICC to favor their payphone operations as part of the same pattern of discrimination discussed in the previous section.

As APCC stressed in its comments, the FCC must do one of two things: (1) halt the LEC imposition of “no-PIC” fees on independent payphones that do *not* presubscribe to a 1+ carrier, or, in the alternative, (2) require LECs to charge their own payphone operations an end user “no-PIC” charge for each LEC payphone. Both past Commission rulings and those of various state commissions have in fact encouraged independent PSPs *not* to presubscribe their payphones as a means of deterring fraud on the communications network. Since LEC payphones do not have the same exposure to potential fraud as their independently-owned counterparts, as established by APCC in its initial comments, charging a “no-PIC” charge to independent PSPs directly benefits the LEC payphone operations (which are never subject to a “no-PIC” charge).

As APCC noted in its comments, an assessment of a “no-PIC” charge on independent PSPs, but not LEC PSPs, perpetuates residual discrimination between LEC-

owned and independently-owned payphones. Section 276 of the Act explicitly eliminated all distinctions between LEC PSPs and independent PSPs, and mandates that they be treated the same under the Commission's rules and state regulations. Further, Section 276 prohibits discrimination by the LEC in favor of its own payphone operations. The current "no-PIC" practices are discriminatory, however, because the LECs never get the PICC passed back to them. In short, the LECs get the best of both worlds – fraud protection and no PICC.<sup>3</sup>

Accordingly, it is in the public interest and consistent with the Commission's post-1996 Act policy on payphones to require that LECs *not* impose any "no-PIC" charge on any payphone that is not presubscribed to an IXC. Should the Commission find, however, that a "no-PIC" charge is permissible for policy reasons that are specific to its access charge reform proceeding, APCC again stresses that the Commission must ensure that such a charge does not have a discriminatory impact vis-à-vis its payphone rules. With regard to the LECs that impose a "no-PIC" charge on any independent PSP, the Commission should determine that the LEC must impute this "no-PIC charge" to all of its payphones to maintain the competitive parity that is required by Section 276.

Either of the solutions discussed in the previous section would end the "no-PIC" problem. If the LEC were to impose the PICC on the presubscribed 1+ carrier for the

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<sup>3</sup> In cases where the LECs have deployed "smart" payphones that do not have the fraud protection capabilities associated with "dumb" payphones, the treatment should be the same as it is for independent payphones. Only a small minority of LEC payphones, however, are "smart."

LEC's payphones, as OneCall Communications and Oncor suggest, the issue of imputing the PICC would be mooted. (OneCall, 5; Oncor, 5) However, if the PICC is imposed on the 0+ carrier presubscribed to the LEC payphones, the discrimination issue would remain and it would still be necessary to impute the PICC to the LEC payphone operations.

**C. Payphones Should Be Charged The PICC At The Single-Line Business Rate**

As APCC and others have made the Commission aware, LECs currently impose the *multiline* business PICC on IXC presubscribed to payphones, which the IXCs then pass on to end user PSPs. (APCC, 14; OneCall, 5; Cleartel, 1; Oncor, 7, AMNEX, 3) As APCC emphasized in its comments, payphones for a variety of reasons are *not* multiline businesses. As APCC noted in its comments, unlike the typical multiline situation, each payphone is a stand-alone facility, with a separate line number that transmits an individual automatic number identification ("ANI"), has a separate physical plant, and has a dedicated line. In addition, payphones are not concentrated, and have no direct inward dialing ("DID") or shared use. As AMNEX states in its comments, each payphone is billed as a separate individual business line for the purposes of service order charges, CARE codes, and record order changes. (AMNEX, 3) Each payphone is maintained as a single-line facility, regardless of whether ownership is the same. Despite the overwhelming evidence that payphones function as single-line, rather than multiline, businesses, LECs persist in imposing the multiline business rate on payphones.

Most of the LECs agree that there are no rules in place about the rate at which the PICC should be charged, but they nonetheless argue that because the subscriber line charge ("SLC") or end user common line charge ("EUCL") rate is a multiline rate, then



that multiline rate should apply to the PICC as well. (SBC 2; GTE, 9; SNET, 8; Ameritech, 8; BellSouth, 3; Bell Atlantic, 2). The parties cite the Payphone Order to support the proposition that LECs must apply the multiline business rate for SLCs. Payphone Order, ¶187. The LECs, however, have taken language from the Payphone Order out of context. In the Payphone Order, the Commission was concerned with ending discrimination among payphone providers. The Commission did not address or intend to address the classification of SLC payments. The Payphone Order merely observed that LECs charged independent PSPs (but not LEC PSPs) a SLC at the multiline rate. Payphone Order, ¶182. The Payphone Order then went on to hold that LEC PSPs would be required to pay the same SLC as the independent PSPs. Id., ¶187. The Commission did not discuss the appropriateness of the multiline rate.

The LECs should not be allowed to use SLC charges as a basis for the imposition of a multiline PICC.<sup>4</sup> A mistaken interpretation of the Commission's rules regarding the recovery of SLCs should not become the flawed basis for a wholly separate class of charges that did not even exist at the time of the Payphone Order. In short, the Commission's SLC policies cannot be used as authority for charging the *multiline* business rate for the PICC.

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<sup>4</sup> A federal appellate court has since struck down the Commission's rule, which allowed the LECs to impose a SLC on independent PSP end users in the pre-1996 Act period without imposing an equivalent charge on LEC payphones. C.F. Communications Corp. v. FCC, 128 F.3d 735 (D.C. Cir. 1997).

The fundamental reality remains – payphones are best treated as single-line businesses rather than multiline ones. The commenting parties have established that payphone operations most resemble single-line businesses. The commenters have also shown that economic realities in the payphone industry will significantly lessen the availability of payphones if the multiline business PICC is allowed to continue. (OneCall, 6; Cleartel, 7-8). Section 276 and the Commission’s rules mandate the promotion of competition among payphone service providers and the widespread deployment of payphone services to the benefit of the general public.<sup>5</sup> In light of this mandate, APCC once again urges the Commission to clarify that all payphones are to be treated as single-line businesses rather than as multiline businesses for PICC purposes.

**D. Imposition Of The PICC By The LECs Will Lead To Over-Recovery Of LEC Costs Under The New Services Test**

The various commenters also fail to consider the effect of the PICC on the rates LECs charge independent PSPs for payphone lines. Under the Commission’s rules, the LECs must comply with the new services test in their provision of all payphone services, including the basic payphone line.<sup>6</sup> The new services test requires rates for these services to be cost based.<sup>7</sup> Any charges arising from the Commission’s rules, such as the PICC,

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<sup>5</sup> 47 U.S.C. § 276(b)(1).

<sup>6</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 21,233, 21,308, ¶ 163 & n.492 (1996).

<sup>7</sup> Id.

imposed by the LECs must be deducted from the rates charged for payphone lines at the local level.<sup>8</sup> Therefore, each LEC's rate for a payphone line should be reduced by the amount of the PICC for as long as the LEC elects to impose the PICC. If the LECs are permitted to impose the PICC without a concomitant reduction in their payphone line rates as mandated by the new services test, the LECs will over-recover their costs for the payphone lines, which is a result expressly prohibited by Section 276.

Respectfully submitted,



Albert H. Kramer  
Michael Carowitz  
Christopher T. McGowan

DICKSTEIN SHAPIRO MORIN  
& OSHINSKY LLP  
2101 L Street, N.W.  
Washington, D.C. 20037-1526  
(202) 828-2226

Attorneys for American Public  
Communications Council

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<sup>8</sup> See, e.g., Bell Atlantic – West Virginia, Inc., WV Case No. 97-0643-T-T, Commission Order, at 16-17 (P.S.C.W.V. May 27, 1998).

### CERTIFICATE OF SERVICE

I hereby certify that on June 2, 1998, a copy of the foregoing Reply Comments of the American Public Communications Council was delivered by hand or United States first-class mail, postage pre-paid to the following parties:

Chief, Enforcement Division\*  
Common Carrier Bureau  
Stop 1600-A, Room 6008  
Federal Communications Commission  
2025 M Street, NW  
Washington, DC 20554  
(2 copies)

ITS\*  
1231 20<sup>th</sup> Street, N.W.  
Washington, DC 20036

John H. Goida  
President  
Teleconcepts Inc.  
P.O. Box 2324  
Princeton, NJ 08543

Stephen H. Loberbaum  
ONCOR  
Operator Communications, Inc.  
6905 Rockledge Drive, Suite 600  
Bethesda, MD 20817

William M. Waldron  
Boston Telecommunications Company  
1 Chace Road, #14  
Crossroad Commons Plaza  
East Freetown, MA 02717

Larry Kay  
National Operator Services, Inc.  
One Democracy Plaza, Suite 204  
6701 Democracy Boulevard  
Bethesda, MD 20817

M. Robert Sutherland  
Richard M. Sbaratta  
Helen A. Shockey  
Suite 1700  
115 Peachtree Street, N.E.  
Atlanta, GA 30309-3610

Wendy S. Bluemling  
Director-Regulatory Affairs  
227 Church Street  
New Haven, CT 06510

Alan Buzacott  
Regulatory Analyst  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Edward D. Young, III  
Michael E. Glover  
Edward Shakin  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201

Robert M. Lynch  
Durward D. Dupre  
Michael J. Spevak  
Thomas A. Pajda  
One Bell Plaza, Room 3003  
Dallas, Texas 75202

Christopher M. Heimann  
Counsel for Ameritech  
Suite 1020  
1401 H Street, NW  
Washington, DC 20005

Guy Longobardo  
General Counsel  
AMNEX, Inc.  
100 West Lucerne Circle  
Suite 100  
Orlando, FL 32801

Dana Frix  
Tamar E. Finn  
Kathleen L. Greenan  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, DC 20007

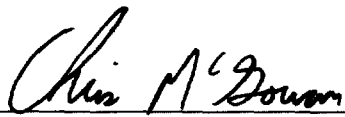
Mitchell F. Brecher  
Fleischman and Walsh, LLP  
1400 Sixteenth Street, NW  
Washington, DC 20036

Ann C. Bernard  
Corporate Counsel  
One Call Communications, Inc.  
801 Congressional Boulevard  
Carmel, Indiana 46032

Cheryl A. Tritt  
Joan E. Neal  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Suite 5500  
Washington, DC 20006-1888

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge, HQE03J27  
P.O. Box 152092  
Irving, TX 75015-2092

Gail L. Polivy  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036

  
\_\_\_\_\_  
Christopher McGowan